

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

LUMUMBA EARLE, individually and
as the Personal Representative of the
ESTATE of ANNIE EARLE, deceased,

Plaintiff,

v.

Civil Action: 3:14-29536

CITY OF HUNTINGTON, d/b/a CITY OF
HUNTINGTON POLICE DEPARTMENT,
a municipal corporation; JOSH NIELD,
individually and in his official capacity;
ST. MARY'S MEDICAL CENTER, INC., d/b/a
ST. MARY'S MEDICAL CENTER,
TAMMY PEYTON, individually and in her official capacity,
TARA RAMSEY, individually and in her official capacity,
BOBBI ADAMS, individually and in her official capacity,
MELISSA BLAGG, individually and in her official capacity,
ANDREA HEATH, individually and in her official capacity,
CABELL COUNTY 911, CABELL COUNTY COMMISSION,
TED GRANT, individually and in his official capacity,
PATRICK WATKINS, individually and in his official capacity,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANTS, CITY OF HUNTINGTON AND JOSH
NIELD'S, MOTION *IN LIMINE* TO EXCLUDE STATEMENTS OF MURDER,
RAPE AND/OR MYSOGYNY [SIC]**

Now Comes Plaintiff Lumumba Earle, individually, and as the Personal Representative of the Estate of Annie Earle, Deceased, by and through counsel, Richard W. Weston, and responds to Defendants, City of Huntington and Josh Nield's, Motion *in Limine* to Exclude Statements of Murder, Rape and/or Mysogyny [sic], and states the following in support:

1. Defendant's motion essentially asks this Court to restrain plaintiff's counsel from the use of the English language.

2. It is undisputed that Nield killed Annie Earle by driving his knee into her chest. Neild claims this was accidental, plaintiff claims this was an intentional act. If it was an intentional act then it is murder.

3. Even the HPD Chief of Police describes Mr. Nield's actions toward the girls as second degree sexual assault. Second degree sexual assault is a legal term for rape.

4. Defendant claims that there is no evidence to support the claim that Nield is a misogynist. A misogynist is a person who dislikes, despises, or is strongly prejudiced against women.

5. If plaintiff is correct that Nield murdered Ms. Earle, a woman, and raped the two girls, two women, it is certainly not a logical leap to conclude that he is a misogynist.

6. Both the murder of Ms. Earle and the rape of the girls are violence against women. Our country has recognized the severity of this problem by passing the Violence Against Women Act.

7. Part of plaintiff's theory of the case is that Nield preys on those physically weaker than him. He would not have performed the acts he did in either situation had he not been physically stronger than his victims.

6. None of these words are inherently prejudicial that a jury can't decide for themselves if they apply to Nield, or not.

7. There is no basis to exclude plaintiff's counsel for using these words as there is nothing prejudicial about them

Wherefore, Plaintiff requests the Court deny the Defendants' Motion and for any other relief deemed proper by the Court.

Lumumba Earle,
An Individual,

By Counsel: /s/Richard W. Weston
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CERTIFICATE OF SERVICE

I, Richard W. Weston, do hereby certify that on this 21st day of July 2017, I electronically filed the foregoing “**PLAINTIFF’S RESPONSE TO DEFENDANTS, CITY OF HUNTINGTON AND JOSH NIELD’S, MOTION *IN LIMINE* TO EXCLUDE STATEMENTS OF MURDER, RAPE AND/OR MYSOGYNY [SIC]**,” with the court using the CM/ECF system which will send notification of such filing to the below counsel of record:

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